



COMMONWEALTH of VIRGINIA

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The Honorable Rebecca P. Hogan
Clerk of the Frederick County Circuit Court
5 North Kent Street
Winchester, Virginia 22601

Dear Ms. Hogan:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether grantor's tax should be assessed on a deed conveying real property from a private bank to the Commonwealth in connection with a highway project carried out by the Virginia Department of Transportation ("VDOT"). In the scenario you present, VDOT purchased the real property from the bank for public use on the highway improvement project.

Applicable Law and Discussion

In Virginia, deeds recorded in circuit court are subject to the recordation taxes established in the Virginia Recordation Tax Act (the "Act").¹ Among other things, the Act provides generally that the grantor in a conveyance of real estate must pay a grantor's tax, which is sometimes described as a "transfer tax."² Pursuant to the Act, "[t]he rate of the tax, when the consideration or value of the interest . . . exceeds \$100, [is] 50 cents for each \$500 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale"³

¹ VA. CODE ANN. §§ 58.1-800 to 58.1-817 (2013 & Supp. 2016).

² See § 58.1-802 (Supp. 2016); *Small v. Fannie Mae*, 286 Va. 119, 124 n.3 (2013).

³ Section 58.1-802 ("The rate of the tax, when the consideration or value of the interest, whichever is greater, exceeds \$100, shall be 50 cents for each \$500 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance.").

The Act, however, establishes several exemptions to the grantor's tax. Relevant here is the exemption in § 58.1-811(C)(5), which provides that no grantor's tax shall be assessed on a "conveyance of real estate to the Commonwealth or any county, city, town, district, or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable [as grantors]." ⁴ Applying the language of the exemption to your inquiry, I conclude that no grantor's tax shall be assessed if the conveyance 1) is to the Commonwealth, and 2) the Commonwealth is required by law to reimburse the grantor for the tax. ⁵

In the circumstances you describe, the conveyance is clearly to the Commonwealth, as the Commonwealth is grantee in connection with a highway project carried out by VDOT, a state agency. With respect to reimbursement, §§ 25.1-401 and 25.1-418, together with VDOT's interpretation of those statutes, provide that when VDOT purchases real property for a transportation project, it is required to reimburse the seller for recording fees and transfer taxes, if paid by the owner. ⁶ Thus, in the scenario you present, VDOT—an agency of the Commonwealth—would be required by law to reimburse the grantor for the tax, if assessed. Because it is required by law to reimburse the grantor for the tax, § 58.1-811(C)(5) provides that the tax should not be assessed. ⁷

⁴ Section 58.1-811(C)(5) (Supp. 2016).

⁵ Although it is not immediately clear whether the exemption applies to any conveyance of real estate to the Commonwealth, or only a conveyance in which the Commonwealth is required by law to reimburse the grantor for the tax, a well-established canon of statutory construction favors the latter interpretation. According to the canon of *meaningful variation*, if the legislature "uses two different terms in the same act, those terms are presumed to have distinct and different meanings." *Indus. Dev. Auth. v. Bd. of Supvrs.*, 263 Va. 349, 353 (2002) (citing *Shelor Motor Co. v. Miller*, 261 Va. 473, 480 (2001)); *see generally* LINDA D. JELLUM, *MASTERING STATUTORY INTERPRETATION* 130-31 (2d ed. 2013). Here, the General Assembly chose the term "political unit" rather than repeating the term "political subdivision." Thus, according to the canon of meaningful variation, the two terms should be construed as referring to different things. The only entity in the statute that may (in context) be construed as a "political unit" but not a "political subdivision" is the Commonwealth. Accordingly, the term "political unit" should be read to include the Commonwealth, making the exemption applicable to conveyances to the Commonwealth in which it is required by law to reimburse the grantor for the tax. *See* 1980-1981 Op. Va. Att'y Gen. 292, 293.

⁶ *See* § 25.1-401(C) (2016); § 25.1-418 (2016); VIRGINIA DEPARTMENT OF TRANSPORTATION, *RIGHT OF WAY MANUAL OF INSTRUCTIONS*, at 3-9 to 3-10 (3rd ed., last rev. Aug. 25, 2011), http://www.virginiadot.org/business/resources/Right_of_way/RW_Manual02132012_TechRev.pdf (digesting § 25.1-418 to require payment of grantor's tax, consistent with agency practice). *See generally* 49 C.F.R. § 24.106(b) (available at www.eCFR.gov, current as of Jan. 6, 2017) (requiring that a state governmental agency that acquires real property for a transportation project shall reimburse the grantor for recording fees and transfer taxes, as a condition of federal funding); 1979-80 Op. Va. Att'y Gen. 349, 349. Considering the overall statutory and regulatory context—and in particular the federal regulation cited above—I consider VDOT's interpretation persuasive and entitled to deference. *See Jackson v. W.*, 14 Va. App. 391, 399 n.6 (1992).

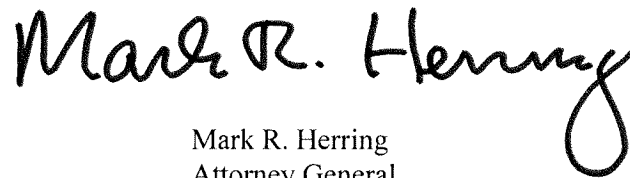
⁷ This conclusion comports with the evident purpose of the exemption to reduce the state's administrative accounting burden. *See Commonwealth v. Zamani*, 256 Va. 391, 395 (1998) ("The primary objective of statutory construction is to ascertain and give effect to legislative intent.").

Conclusion

For the foregoing reasons, it is my opinion that the grantor's tax may not be assessed on a deed conveying real property from a private bank to the Commonwealth, following VDOT's purchase of the property for public use on a highway improvement project.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looping "H" and a long, sweeping "g".

Mark R. Herring
Attorney General